

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRYOVAC, INC.,)
Plaintiff/Counter-Defendant.) Civil Action No. 04-1278
vs.) Hon. Kent A. Jordan
PECHINEY PLASTIC PACKAGING, INC.,)
Defendant/Counter-Plaintiff.)

**PECHINEY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON
TORTIOUS INTERFERENCE CLAIMS**

1. Pursuant to Fed. R. Civ. P. 56, Defendant/Counter-Plaintiff Pechiney Plastic Packaging Inc. (“Pechiney”) respectfully moves for partial summary judgment on Counts II and III of Cryovac’s Second Amended Complaint and Pechiney’s Sixth through Ninth Affirmative Defenses. There is no dispute as to any material fact, and Pechiney is entitled to partial judgment as a matter of law.

2. Pechiney concisely states the issues appropriate for partial summary judgment as follows:

- A. Cryovac's tortious interference with contractual relations claim is preempted by federal patent law.
- B. Cryovac's tortious interference with prospective contractual relations claim is preempted by federal patent law.
- C. Pechiney did not tortiously interfere with Cryovac's contractual relations with National Beef because Cryovac did not have a contract with National Beef.

- D. Pechiney did not tortiously interfere with Cryovac's contractual relations with National Beef because, even if there had been a contract between National Beef and Cryovac, Pechiney did not know about that contract.
- E. Pechiney did not tortiously interfere with Cryovac's prospective contractual relations with National Beef because Cryovac cannot show that Pechiney used improper or wrongful means in winning business from National Beef.

3. Pechiney submits contemporaneously herewith: (i) Memorandum in Support of Pechiney's Motion for Partial Summary Judgment on Tortious Interference Claims; (ii) Pechiney Plastic Packaging, Inc.'s Unified Appendix for Its Motions for Summary Judgment Vols. I-VI; and (iii) Pechiney Plastic Packaging, Inc.'s Unpublished Decisions Cited Within Its Motions for Summary Judgment.

WHEREFORE, there being no genuine issue of material fact, and Pechiney being entitled to partial judgment as a matter of law, Pechiney respectfully request that partial summary judgment on Counts II and III be entered in its favor, together with all other just and proper relief.

Respectfully submitted,

PECHINEY PLASTIC PACKAGING, INC.

Dated: October 19, 2005

By: /s/ N. Richard Powers
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Pechiney's Motion for Partial Summary Judgment on Tortious Interference Claims to be served on:

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This 19th day of October, 2005 via federal express and hand delivery.

/s/ N. Richard Powers
N. Richard Powers

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**[PROPOSED] ORDER GRANTING PECHINEY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON TORTIOUS INTERFERENCE CLAIMS**

THIS MATTER having come before the Court and after consideration of the entire record in support of Pechiney's Motion for Partial Summary Judgment on Tortious Interference Claims, this Court finds that:

1. Cryovac's tortious interference with contractual relations claim and tortious interference with prospective contractual relations claim are both preempted by federal patent law.
2. Pechiney did not tortiously interfere with Cryovac's contractual relations with National Beef because Cryovac did not have a contract with National Beef.
3. Pechiney did not tortiously interfere with Cryovac's contractual relations with National Beef because Pechiney did not know about a contract between National Beef and Cryovac.
4. Pechiney did not tortiously interfere with Cryovac's prospective contractual relations with National Beef because Cryovac did not show that Pechiney used improper or wrongful means in winning business from National Beef.

AND, THEREFORE, IT IS HEREBY ORDERED THAT:

Pechiney's Motion for Partial Summary Judgment on Tortious Interference Claims is hereby GRANTED pursuant to Fed. R. Civ. P. 56 and judgment is hereby ENTERED in favor of Pechiney and against Cryovac on Counts II and III in Cryovac's Second Amended Complaint.

DATED: _____

The Honorable Kent A. Jordan

Submitted by:

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